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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

6  
ROY O'GUINN,

7 Plaintiff,

8 v.

9 ISIDRO BACA, *et al.*,

10 Defendants.

11 Case No.: 3:18-cv-00469-MMD-WGC

12 **ORDER**

13 Re: ECF No. 38

14 Before the court is Plaintiff's "Amended Appointment for Counsel, Motion" (ECF No. 38).  
15 Plaintiff bases his motion on the fact that (1) he is unable to "understand and law work is not done  
16 by this plaintiff," (2) on March 8, 1981, "plaintiff was substantially disabled by a 1980 Plymouth  
17 Volare going 50 mph on the Park City, Utah off-ramp off of I-80 east. My skull, brain was greatly  
18 damaged by severe cerebral contusion and an extreme traumatic brain injury that did include  
19 traumatic encephalopathy and my brain was greatly increased in its size," (3) Plaintiff "had many  
20 in-prison assaults to my head mainly rt. side," (4) the "dangerous symptoms have been in my life  
21 since 1981 and been recurring since 12-18-17 and 5-30-21," and (5) "this case is medical and does  
22 involve much damage to a 66 yr. old disabled man who is daily experiencing deep pains inside my  
23 head that come close to a state of unconsciousness while the pain is substantial." (*Id.*) Plaintiff also  
claims he has "many neurological disorders and that I cannot be an attorney." (*Id.*)

1 On December 7, 2020, Chief District Judge Miranda M. Du entered her order regarding  
2 Plaintiff's first request for the appointment of counsel (ECF No. 19), which stated in part:

3 Although Plaintiff stated a colorable failure to protect claim against  
4 Defendants Baca and Buchanan, that determination was based on allegations  
5 and not evidence. Plaintiff has not yet shown a likelihood of success on the  
6 merits, and it is premature for the Court to assess whether exceptional  
7 circumstances exist. Plaintiff appears to understand what claims are  
8 proceeding in this case. The Court therefore denies the motion for  
9 appointment of counsel without prejudice to Plaintiff later seeking  
10 appointment of counsel if the case does not settle in mediation, the stay is  
11 lifted, and *Plaintiff shows exceptional circumstances*.

12 (ECF No. 22 at 2; emphasis added.)

13 While the court recognizes Plaintiff claims to have certain medical issues, any *pro se*  
14 inmate such as Mr. O'Guinn would likely benefit from services of counsel, that is not the standard  
15 this court must employ in determining whether counsel should be appointed.  
16 *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

17 A litigant in a civil rights action does not have a Sixth Amendment right to appointed  
18 counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States Supreme  
19 Court has generally stated that although Congress provided relief for violation of one's civil rights  
20 under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring complaints to  
21 federal court and not a right to discover such claims or even to litigate them effectively once filed  
22 with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

23 In very limited circumstances, federal courts are empowered to request an attorney to  
24 represent an indigent civil litigant. The circumstances in which a court will grant such a request,  
25 however, are exceedingly rare, and as Chief District Judge Du advised Plaintiff earlier, the court  
26 will grant the request only under exceptional circumstances or extraordinary circumstances.

1 *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986); *Wilborn v.*  
2 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

3 A finding of such exceptional or extraordinary circumstances requires that the court  
4 evaluate both the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to  
5 articulate his claims in light of the complexity of the legal issues involved. Neither factor is  
6 controlling; both must be viewed together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015,  
7 1017 (9th Cir. 1991), *citing Wilborn, supra*, 789 F.2d at 1331. Plaintiff has shown an ability to  
8 articulate his claims including successfully appealing the dismissal of his case to the Ninth Circuit  
9 Court of Appeals. (ECF No. 18.)

10 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

11 If all that was required to establish successfully the  
12 complexity of the relevant issues was a demonstration of  
13 the need for development of further facts, practically all  
14 cases would involve complex legal issues. Thus,  
15 although *Wilborn* may have found it difficult to  
articulate his claims *pro se*, he has neither demonstrated  
a likelihood of success on the merits nor shown that the  
complexity of the issues involved was sufficient to  
require designation of counsel.

16 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying  
17 the request for appointment of counsel because the Plaintiff failed to establish the case was  
18 complex as to facts or law. 789 F.2d at 1331.

19 The substantive claims involved in this action are not unduly complex. Plaintiff's First  
20 Amended Complaint was allowed to proceed on the failure to protect claims against Defendants  
21 Buchanan and Baca. (ECF Nos. 18 and 22.) These claims are not so complex that counsel needs  
22 to be appointed to prosecute them.

1       Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of  
2 the likelihood of success on the merits of his claims. Plaintiff has not provided any evidence, nor  
3 has he made any argument in his motion for appointment of counsel, showing that he is likely to  
4 prevail on the merits of his claim.

5 In the exercise of the court's discretion, it **DENIES** Plaintiff's Amended Motion for  
6 Appointment of Counsel (ECF No. 38).

## **IT IS SO ORDERED.**

Dated: July 13, 2021.

Walter G. Cobb

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**WILLIAM G. COBB  
UNITED STATES MAGISTRATE JUDGE**